

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

IN RE: BOSTON SCIENTIFIC CORP.  
PELVIC REPAIR SYSTEM  
PRODUCTS LIABILITY LITIGATION

MDL No. 2326

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THIS DOCUMENT RELATES TO:

*Linda Cooper, et al. v. Boston Scientific Corporation*  
Civil Action No. 2:16-cv-06657

MEMORANDUM OPINION & ORDER

Pending before the court is the Defendant's Motion to Dismiss with Prejudice [ECF No. 8] filed by Boston Scientific Corporation ("BSC"). The plaintiffs have responded to the Motion. [ECF No. 10]. Thus, this matter is ripe for my review. For the reasons stated below, the Motion is **DENIED**.

**I. Background**

The case resides in one of seven MDLs assigned to me by the Judicial Panel on Multidistrict Litigation concerning the use of transvaginal surgical mesh to treat pelvic organ prolapse and stress urinary incontinence. In the six remaining active MDLs, there are more than 19,000 cases currently pending, approximately 3800 of which are in the BSC MDL, MDL 2326.

In an effort to efficiently and effectively manage this MDL, the court decided to conduct pretrial discovery and motions practice on an individualized basis so that once a case is trial-ready (that is, after the court has ruled on all summary judgment motions, among other things), it can then be promptly transferred or remanded to the

appropriate district for trial. To this end, the court placed this and other cases in BSC Wave 4. Pretrial Order (“PTO”) # 175 [ECF No. 4955], *In re Bos. Sci. Corp., Pelvic Repair Sys. Prods. Liab. Litig.*, No. 2:12-md-02326, <http://www.wvsd.uscourts.gov/MDL/boston/orders.html>.

Managing multidistrict litigation requires the court to streamline certain litigation procedures in order to improve efficiency for the parties and the court. Some of these management techniques simplify the parties’ discovery responsibilities. PTO # 175, for example, provides that each plaintiff in Wave 4 must submit a completed Plaintiff Fact Sheet (“PFS”) to defendants by March 19, 2018. PTO # 175, at 2. The plaintiffs, however, did not comply with PTO # 175 in that they failed to submit a completed PFS within the court-ordered deadline. On this basis, BSC now seeks dismissal of the plaintiffs’ case with prejudice.

## **II. Discussion**

Pursuant to PTO # 175, each plaintiff in Wave 4 was ordered to complete and serve a PFS on defendants by March 19, 2018. PTO # 175, at 2. According to BSC, the plaintiffs failed to submit a completed PFS within the court-ordered deadline. Accordingly, pursuant to PTO # 175, BSC filed this Motion to Dismiss on April 6, 2018.

In response, the plaintiffs concede that they did not file the PFS by March 19, 2018. However, the plaintiffs did serve their PFS on BSC on March 27, 2018—prior to BSC’s filing the Motion to Dismiss and without receiving any notification from defense counsel that the PFS remained outstanding. Under these circumstances, I

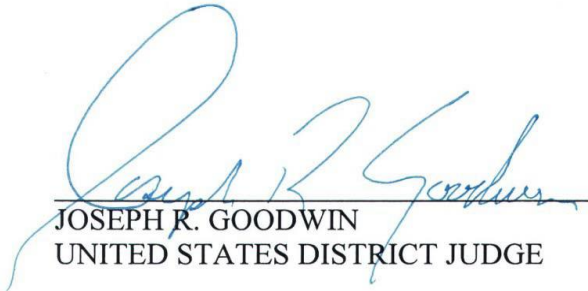
**FIND** that the imposition of sanctions as requested by BSC is unwarranted in this case.

### **III. Conclusion**

It is **ORDERED** that the Defendant's Motion to Dismiss with Prejudice [ECF No. 8] is **DENIED**.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: May 22, 2018



JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE